

Message Text

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R 290250Z AUG 73
FM SECSTATE WASHDC
TO ALL OECD CAPITALS
XMT AMEMBASSY LONDON
AMEMBASSY ROME
AMEMBASSY ATHENS

C O N F I D E N T I A L STATE 151918

FOR CHARGE FROM CASEY

C O R R E C T E D COPY FOR MRN

FOLLOWING SENT BRASILIA, INFO TRIPOLI, LONDON, ROME,ATHENS,
RIO DE JANEIRO FROM SECSTATE ON AUG 02, RPTD TO YOU:

QUOTE

C O N F I D E N T I A L STATE 151918

E.O. 11652: GDS - DECLASSIFY DECEMBER 31, 1979
TAGS: ENRG, LY, BR
SUBJECT: BUNKER HUNT NATIONALIZATION
REFS: (A) STATE 131160
(B) TRIPOLI 905
(C) STATE 146383

FOR CHARGE FROM CASEY

1. REFTELS CONTAIN CONVERSATIONS IN DEPT WITH NELSON
BUNKER HUNT OIL CO. (BH) REPS FOLLOWING BH NATIONALIZATION
BY LIBYAN GOVT (LARG) ON JUNE 11, TEXT OF NOTE RE NATIONAL-
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IZATION GIVEN TO LARG JULY 8 AND LARG'S INITIAL ORAL

REACTION THERETO (REF B BEING REPEATED TO POSTS). LARG HAS NOT FORMALLY RESPONDED TO OUR NOTE.

2. BH HAS JOINED BP IN SUIT IN GUANABARO STATE COURT SEEKING TO BLOCK PURCHASE BY PETROBRAS OF OIL ORIGINATING FROM BP-BH NATIONALIZED CONCESSION. (OIL BEING OFF-LOADED IN RIO PORTS.) PETROBRAS HAS FILED MOTION TO HAVE SUIT MOVED TO FEDERAL COURT, AND WE UNDERSTAND GOB HAS ALREADY INTERVENED IN CASE ON PETROBRAS' BEHALF. (BH'S LOCAL COUNSEL IS JOSE THOMAZ NABUCO, AVENIDA RIO BRANCO 85 IN RIO, TEL. 221-1927.)

3. BP HAS BROUGHT SIMILAR SUITS IN ITALY AND GREECE AGAINST PURCHASERS NATIONALIZED OIL. ITALIAN COURT OF FIRST INSTANCE DENIED BP'S CLAIM. BP HAS APPEALED BUT NO HEARING DATE HAS BEEN SET. SUIT IN GREECE WILL BE HEARD IN SEPTEMBER. BH WILL JOIN BP IN BOTH SUITS.

4. HMG IS SUPPORTING BP'S LEGAL ACTIONS BY DIPLOMATIC REPRESENTATIONS AS GENERAL POLICY AND HAS ASKED WE SUPPORT BH IN SAME MANNER. AT HMG REQUEST, USG MADE LOW-KEY DEMARCHE TO GREEK GOVT ON BEHALF OF BH AND BP. BH HAS ALSO REQUESTED THAT WE SUPPORT THEM IN PRIVATE LITIGATION TO BLOCK DISTRIBUTION OF NATIONALIZED OIL BY LARG, INCLUDING DIPLOMATIC REPRESENTATIONS TO GOVERNMENTS INVOLVED IN PURCHASING OIL. (SEE PARA 3(B) REF A.) WE INDICATED WE WOULD CONSIDER HOW WE COULD BE HELPFUL IN THIS REGARD.

5. USG AGREES BH AND BP MUST SEEK PRIVATE LEGAL REMEDIES WHEREVER POSSIBLE SINCE FAILURE TO DO SO CONSTITUTES ENCOURAGEMENT TO LARG TO CONTINUE ITS POLICY OF NATIONALIZING FOREIGN OIL COMPANIES. EMBASSY IS AWARE THAT PETROBRAS IS INSTRUMENTALITY OF GOB AND THAT PRESIDENT-DESIGNATE GEISSEL HAS BEEN PETROBRAS HEAD. WE BELIEVE IT IMPORTANT THAT USG ASSERT ITS VIEWS TO GOB BECAUSE RIGHTS OF US NATIONAL ARE AT STAKE, AND BECAUSE WE WISH TO DISCOURAGE OTHERS FROM BUYING NATIONALIZED OIL FROM LARG.

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6. REQUEST YOU APPROACH FOREIGN MINISTRY AT APPROPRIATELY HIGH LEVEL (AND BEFORE AMBASSADOR CRIMMINS' ARRIVAL) AND ORALLY MAKE FOLLOWING POINTS:

(A) USG RECOGNIZES RIGHT OF ANY SOVEREIGN STATE TO TAKE PROPERTY OWNED BY FOREIGN NATIONALS AND LOCATED WITHIN ITS TERRITORY IF SUCH TAKING IS ACCOMPANIED BY PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION, IS FOR A

PUBLIC PURPOSE, AND IS NOT DISCRIMINATORY.

(B) NATIONALIZATION OF BH ON JUNE 11, 1973, WHICH LAW NO. 42 ANNOUNCED BY LIBYAN REVOLUTIONARY COMMAND COUNCIL SOUGHT TO EFFECT, DID NOT SATISFY THESE CRITERIA IN ANY RESPECT. A PUBLIC STATEMENT ON JUNE 11 BY THE CHAIRMAN OF THE REVOLUTIONARY COMMAND COUNCIL AND AN OFFICIAL LARG COMMENTARY (BROADCAST BY RADIO TRIPOLI ON SAME DATE) ON LAW NO. 42 INDICATED, THE REASONS FOR BH NATIONALIZATION WERE POLITICAL REPRISAL AGAINST USG AND ECONOMIC COERCION AGAINST INTERESTS OF OTHER US NATIONALS DOING BUSINESS IN LIBYA. THESE REASONS DO NOT CONSTITUTE VALID PUBLIC PURPOSE AS REQUIRED BY ESTABLISHED PRINCIPLES OF INTERNATIONAL LAW BUT RATHER

CONFIRM THAT LARG ACTION WAS ARBITRARY AND DISCRIMINATORY.

(C) ALTHOUGH LAW NO. 42 SETS OUT PROCEDURE FOR PROVIDING COMPENSATION, IT REMAINS TO BE SEEN WHETHER COMPENSATION WILL IN FACT BE PAID, AND, IF SO, WHETHER IT WILL BE ADEQUATE AND EFFECTIVE. IN ANY EVENT, LARG CHOICE OF HUNT AS TARGET FOR ATTACK ON USG POLICIES AND US NATIONALS PURELY ARBITRARY; NATIONALIZATION SERVED NO PUBLIC PURPOSE AND, THUS, EVEN IF ADEQUATE AND EFFECTIVE COMPENSATION IS PAID PROMPTLY, IT IS INVALID AND, UNDER INTERNATIONAL LAW, IS NOT ENTITLED TO RECOGNITION BY STATES.

(D) NATIONALIZATION OF HUNT BY LARG IS RESULT IN PART OF LATTER'S SUCCESS IN FINDING BUYERS FOR CRUDE FROM PREVIOUSLY NATIONALIZED BP CONCESSION. GOVERNMENTS OR THEIR INSTRUMENTALITIES WHICH BUY NATIONALIZED OIL ARE IN EFFECT ENCOURAGING AND CONDONING LARG IN ITS
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POLITICALLY-INSPIRED NATIONALIZATION POLICY.

(E) HUNT AND LARG HAD EACH APPOINTED ARBITRATORS FOR SETTLEMENT OF OPERATING DISPUTES ARISING FROM BP NATIONALIZATION IN DECEMBER 1971. LARG-APPOINTED ARBITRATOR INFORMED HIS COUNTERPART ON JULY 17 THAT HE HAD BEEN INSTRUCTED BY LARG TO TERMINATE ARBITRATION SINCE GOVERNMENT AND COMPANY HAD NOTHING FURTHER TO DISCUSS. HUNT HAD WANTED TO KEEP ARBITRATION CHANNEL OPEN AS BEST MEANS OF RESOLVING PROBLEMS BETWEEN COMPANY AND GOVERNMENT, INCLUDING ANY RELATED TO NATIONALIZATION.

(F) IN LIGHT OUR VIEWS THIS MATTER, WHICH USG HAS MADE KNOWN TO LARG, WE REQUEST GOB, OR ANY ENTITY UNDER ITS CONTROL OR SUPERVISION, NOT TO BUY CRUDE OIL

OR PRODUCTS DERIVED THEREFROM WHICH ORIGINATE FROM
NATIONALIZED HUNT CONCESSION IN LIBYA.

7. AS FINAL POINT, CHARGE SHOULD MAKE CLEAR THAT, WHILE
WE AWARE GOB HAS INTERVENED IN SUIT ON PETROBRAS'
BEHALF, USG REQUEST FOR GOB'S FOREBEARANCE, AS POLICY
MATTER, FROM PURCHASING NATIONALIZED OIL IS DISTINCT
FROM ISSUE NOW IN LITIGATION AS TO WHAT LEGAL RIGHT, IF
ANY, PETROBRAS HAS TO OIL. WE WOULD HAVE MADE FOREGOING
POINTS REGARDING OUR VIEW OF LIBYAN ACTIONS TO GOB IN
ANY EVENT. ROGERS UNQTE ROGERS

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